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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

JENNIFER ENDRES, Individually and  
on behalf of all others similarly situated,

Plaintiffs,

vs.

FITON INC,

Defendant.

Case No. 2:24-CV-01589-FMO-PD

**STIPULATED PROTECTIVE  
ORDER**

(PD Version)

☐ Check if submitted without  
material modifications to PD form

**1. INTRODUCTION**

**1.1 PURPOSES AND LIMITATIONS**

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

1 The parties further acknowledge, as set forth in Section 12.3, below, that this  
2 Stipulated Protective Order does not entitle them to file confidential  
3 information under seal; Civil Local Rule 79-5 sets forth the procedures that  
4 must be followed and the standards that will be applied when a party seeks  
5 permission from the court to file material under seal.

6 1.2 GOOD CAUSE STATEMENT

7 This case involves Plaintiff's individual and class allegations that FitOn  
8 violated the Video Privacy Protection Act, 18 U.S.C. § 2710 ("VPPA") by  
9 knowingly sharing Plaintiff's and other FitOn users' private video request and  
10 viewing histories with a third party.

11 This action is likely to involve financial and proprietary information for  
12 which special protection from public disclosure and from use for any purpose  
13 other than prosecution of this action is warranted. Documents for which this  
14 protective order is sought include but are not limited to documents concerning  
15 the personal information of Plaintiff, Defendant's business operations and  
16 practices, personal information of putative class members, and information  
17 possessed by third parties constituting or concerning personal and/or business  
18 information of the Parties.

19 Such confidential and proprietary materials and information constitute,  
20 among other things, confidential business information, information regarding  
21 confidential business practices, or other commercial information, personal  
22 identifiable information, information otherwise generally unavailable to the  
23 public, or which may be privileged or otherwise protected from disclosure.

24  
25 2. DEFINITIONS

26 2.1 Action: this pending federal lawsuit.

27 2.2 Challenging Party: a Party or Non-Party that challenges the  
28 designation of information or items under this Order.

1           2.3    “CONFIDENTIAL” Information or Items: information (regardless  
2 of how it is generated, stored or maintained) or tangible things that qualify for  
3 protection under Federal Rule of Civil Procedure 26(c), and as specified above  
4 in the Good Cause Statement.

5           2.4    Counsel: Outside Counsel of Record and House Counsel (as well  
6 as their support staff).

7           2.5    Designating Party: a Party or Non-Party that designates  
8 information or items that it produces in disclosures or in responses to  
9 discovery as “CONFIDENTIAL.”

10          2.6    Disclosure or Discovery Material: all items or information,  
11 regardless of the medium or manner in which it is generated, stored, or  
12 maintained (including, among other things, testimony, transcripts, and  
13 tangible things), that are produced or generated in disclosures or responses to  
14 discovery in this matter.

15          2.7    Expert: a person with specialized knowledge or experience in a  
16 matter pertinent to the litigation who has been retained by a Party or its  
17 counsel to serve as an expert witness or as a consultant in this Action.

18          2.8    House Counsel: attorneys who are employees of a party to this  
19 Action. House Counsel does not include Outside Counsel of Record or any  
20 other outside counsel.

21          2.9    Non-Party: any natural person, partnership, corporation,  
22 association, or other legal entity not named as a Party to this action.

23          2.10 Outside Counsel of Record: attorneys who are not employees of a  
24 party to this Action but are retained to represent or advise a party to this  
25 Action and have appeared in this Action on behalf of that party or are  
26 affiliated with a law firm which has appeared on behalf of that party, and  
27 includes support staff.

2.11 Party: any party to this Action, including all of its officers, directors, employees, consultants, retained experts, and Outside Counsel of Record (and their support staffs).

2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this Action.

2.13 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.14 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

### 3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

Any use of Protected Material at trial will be governed by the orders of the trial judge. This Order does not govern the use of Protected Material at trial.

### 4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order will remain in effect until a Designating

1 Party agrees otherwise in writing or a court order otherwise directs. Final  
2 disposition will be deemed to be the later of (1) dismissal of all claims and  
3 defenses in this Action, with or without prejudice; and (2) final judgment  
4 herein after the completion and exhaustion of all appeals, rehearings,  
5 remands, trials, or reviews of this Action, including the time limits for filing  
6 any motions or applications for extension of time pursuant to applicable law.  
7

8 5. DESIGNATING PROTECTED MATERIAL

9 5.1 Exercise of Restraint and Care in Designating Material for  
10 Protection. Each Party or Non-Party that designates information or items for  
11 protection under this Order must take care to limit any such designation to  
12 specific material that qualifies under the appropriate standards.

13 Mass, indiscriminate, or routinized designations are prohibited.  
14 Designations that are shown to be clearly unjustified or that have been made  
15 for an improper purpose (e.g., to unnecessarily encumber the case development  
16 process or to impose unnecessary expenses and burdens on other parties) may  
17 expose the Designating Party to sanctions.

18 If it comes to a Designating Party's attention that information or items  
19 that it designated for protection do not, under this stipulated protective order,  
20 qualify for protection, that Designating Party must promptly notify all other  
21 Parties that it is withdrawing the inapplicable designation.

22 5.2 Manner and Timing of Designations. Except as otherwise  
23 provided in this Order (see, e.g., second paragraph of section 5.2(a) below), or  
24 as otherwise stipulated or ordered, Disclosure or Discovery Material that  
25 qualifies for protection under this Order must be clearly so designated before  
26 the material is disclosed or produced.

27 Designation in conformity with this Order requires:  
28

1 (a) for information in documentary form (e.g., paper or electronic  
2 documents, but excluding transcripts of depositions or other pretrial or trial  
3 proceedings), that the Producing Party affix at a minimum, the legend  
4 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that  
5 contains protected material.

6 A Party or Non-Party that makes original documents available for  
7 inspection need not designate them for protection until after the inspecting  
8 Party has indicated which documents it would like copied and produced.  
9 During the inspection and before the designation, all of the material made  
10 available for inspection will be deemed “CONFIDENTIAL.” After the  
11 inspecting Party has identified the documents it wants copied and produced,  
12 the Producing Party must determine which documents, or portions thereof,  
13 qualify for protection under this Order. Then, before producing the specified  
14 documents, the Producing Party must affix the “CONFIDENTIAL legend” to  
15 each page that contains Protected Material.

16 (b) for testimony given in depositions that the Designating Party  
17 identify the Disclosure or Discovery Material on the record, before the close of  
18 the deposition all protected testimony. Parties may also designate protected  
19 testimony within thirty days of receiving the transcript of the testimony by  
20 providing the designation(s) to the court reporter or other transcribing entity  
21 and the other Party/Parties. The transcribing entity shall so designate the  
22 transcript subject to the rights of the other Party/Parties to challenge the  
23 designation.

24 (c) for information produced in some form other than documentary and  
25 for any other tangible items, that the Producing Party affix in a prominent  
26 place on the exterior of the container or containers in which the information is  
27 stored the legend “CONFIDENTIAL.”

28

1           5.3    Inadvertent Failures to Designate. The inadvertent failure to  
2 designate qualified information or items does not, standing alone, waive the  
3 Designating Party's right to secure protection under this Order for such  
4 material. When a designation is added or otherwise corrected, the Receiving  
5 Party must make reasonable efforts to assure that the material is treated in  
6 accordance with the provisions of this Order. Nothing in this provision limits  
7 a Receiving Party's ability to challenge a designation pursuant to this Order.  
8

9   6.    CHALLENGING CONFIDENTIALITY DESIGNATIONS

10          6.1   Timing of Challenges. Any Party or Non-Party may challenge a  
11 designation of confidentiality at any time that is consistent with the Court's  
12 Scheduling Order.

13          6.2   Meet and Confer. The Challenging Party will initiate the dispute  
14 resolution process (and, if necessary, file a discovery motion) under Local Rule  
15 37.1 et seq.

16          6.3    The burden of persuasion in any such challenge proceeding will be  
17 on the Designating Party. Frivolous challenges, and those made for an  
18 improper purpose (e.g., to harass or impose unnecessary expenses and burdens  
19 on other parties) may expose the Challenging Party to sanctions. Unless the  
20 Designating Party has waived or withdrawn the confidentiality designation,  
21 all parties will continue to afford the material in question the level of  
22 protection to which it is entitled under the Producing Party's designation until  
23 the Court rules on the challenge.  
24

25   7.    ACCESS TO AND USE OF PROTECTED MATERIAL

26          7.1   Basic Principles. A Receiving Party may use Protected Material  
27 that is disclosed or produced by another Party or by a Non-Party in connection  
28 with this Action only for prosecuting, defending, or attempting to settle this



1 Action. Such Protected Material may be disclosed only to the categories of  
2 persons and under the conditions described in this Order. When the Action has  
3 been terminated, a Receiving Party must comply with the provisions of section  
4 13 below (FINAL DISPOSITION).

5 Protected Material must be stored and maintained by a Receiving Party  
6 at a location and in a secure manner that ensures that access is limited to the  
7 persons authorized under this Order.

8 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
9 otherwise ordered by the court or permitted in writing by the Designating  
10 Party, a Receiving Party may disclose any information or item designated  
11 “CONFIDENTIAL” only to:

12 (a) the Receiving Party’s Outside Counsel of Record in this Action, as  
13 well as employees of said Outside Counsel of Record to whom it is reasonably  
14 necessary to disclose the information for this Action;

15 (b) the officers, directors, and employees (including House Counsel)  
16 of the Receiving Party to whom disclosure is reasonably necessary for this  
17 Action;

18 (c) Experts (as defined in this Order) of the Receiving Party to whom  
19 disclosure is reasonably necessary for this Action and who have signed the  
20 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

21 (d) the Court and its personnel;

22 (e) court reporters and their staff;

23 (f) professional jury or trial consultants, mock jurors, and  
24 Professional Vendors to whom disclosure is reasonably necessary for this  
25 Action and who have signed the “Acknowledgment and Agreement to Be  
26 Bound” (Exhibit A);



1 (g) the author or recipient of a document containing the information  
2 or a custodian or other person who otherwise possessed or knew the  
3 information;

4 (h) during their depositions, witnesses, and attorneys for witnesses,  
5 in the Action to whom disclosure is reasonably necessary provided: (1) the  
6 deposing party requests that the witness sign the form attached as Exhibit A  
7 hereto; and (2) they will not be permitted to keep any confidential information  
8 unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit  
9 A), unless otherwise agreed by the Designating Party or ordered by the court.

10 Pages of transcribed deposition testimony or exhibits to depositions that are  
11 designated as Confidential pursuant to Section 5.2(b) of this Stipulated  
12 Protective Order may be separately bound by the court reporter and may not  
13 be disclosed to anyone except as permitted under this Stipulated Protective  
14 Order; and

15 (i) any mediator or settlement officer, and their supporting  
16 personnel, mutually agreed upon by any of the parties engaged in settlement  
17 discussions.

18  
19 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
20 IN OTHER LITIGATION

21 If a Party is served with a subpoena or a court order issued in other  
22 litigation that compels disclosure of any information or items designated in  
23 this Action as “CONFIDENTIAL,” that Party must:

24 (a) promptly notify in writing the Designating Party. Such  
25 notification will include a copy of the subpoena or court order;

26 (b) promptly notify in writing the party who caused the subpoena or  
27 order to issue in the other litigation that some or all of the material covered by  
28

1 the subpoena or order is subject to this Protective Order. Such notification  
2 will include a copy of this Stipulated Protective Order; and

3 (c) cooperate with respect to all reasonable procedures sought to be  
4 pursued by the Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party  
6 served with the subpoena or court order will not produce any information  
7 designated in this action as “CONFIDENTIAL” before a determination by the  
8 court from which the subpoena or order issued, unless the Party has obtained  
9 the Designating Party’s permission. The Designating Party will bear the  
10 burden and expense of seeking protection in that court of its confidential  
11 material and nothing in these provisions should be construed as authorizing or  
12 encouraging a Receiving Party in this Action to disobey a lawful directive from  
13 another court.

14  
15 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE  
16 PRODUCED IN THIS LITIGATION

17 (a) The terms of this Order are applicable to information produced by  
18 a Non-Party in this Action and designated as “CONFIDENTIAL.” Such  
19 information produced by Non-Parties in connection with this litigation is  
20 protected by the remedies and relief provided by this Order. Nothing in these  
21 provisions should be construed as prohibiting a Non-Party from seeking  
22 additional protections.

23 (b) In the event that a Party is required, by a valid discovery request,  
24 to produce a Non-Party’s confidential information in its possession, and the  
25 Party is subject to an agreement with the Non-Party not to produce the Non-  
26 Party’s confidential information, then the Party will:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this Action, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party, if requested.

(c) If the Non-Party fails to seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party will not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party will bear the burden and expense of seeking protection in this court of its Protected Material.

#### 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

1  
2 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
3 PROTECTED MATERIAL

4 11.1 When a Producing Party gives notice to Receiving Parties that  
5 certain inadvertently produced material is subject to a claim of privilege or  
6 other protection, the obligations of the Receiving Parties are those set forth in  
7 Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to  
8 modify whatever procedure may be established in an e-discovery order that  
9 provides for production without prior privilege review. Pursuant to Federal  
10 Rule of Evidence 502(d) and (e), the Parties agree production of privileged or  
11 work product protected Disclosure or Discovery Material, including but not  
12 limited to electronically stored information, is not a waiver of privilege or  
13 protection from discovery in this case or in any other federal or state  
14 proceeding. This Order shall be interpreted to provide the maximum  
15 protection allowed by Federal Rule of Evidence 502(d).

16  
17 12. MISCELLANEOUS

18 12.1 Right to Further Relief. Nothing in this Order abridges the right  
19 of any person to seek its modification by the Court in the future.

20 12.2 Right to Assert Other Objections. By stipulating to the entry of  
21 this Protective Order no Party waives any right it otherwise would have to  
22 object to disclosing or producing any information or item on any ground not  
23 addressed in this Stipulated Protective Order. Similarly, no Party waives any  
24 right to object on any ground to use in evidence of any of the material covered  
25 by this Protective Order.

26 12.3 Filing Protected Material. A Party that seeks to file under seal  
27 any Protected Material must comply with Civil Local Rule 79-5. Protected  
28 Material may only be filed under seal pursuant to a court order authorizing

1 the sealing of the specific Protected Material at issue. If a Party's request to  
2 file Protected Material under seal is denied by the court, then the Receiving  
3 Party may file the information in the public record unless otherwise instructed  
4 by the court.

5  
6 13. FINAL DISPOSITION

7 After the final disposition of this Action, as defined in paragraph 4,  
8 within 60 days of a written request by the Designating Party, each Receiving  
9 Party must return all Protected Material to the Producing Party or destroy  
10 such material. As used in this subdivision, "all Protected Material" includes  
11 all copies, abstracts, compilations, summaries, and any other format  
12 reproducing or capturing any of the Protected Material. Whether the  
13 Protected Material is returned or destroyed, the Receiving Party must submit  
14 a written certification to the Producing Party (and, if not the same person or  
15 entity, to the Designating Party) by the 60 day deadline that (1) identifies (by  
16 category, where appropriate) all the Protected Material that was returned or  
17 destroyed and (2) affirms that the Receiving Party has not retained any copies,  
18 abstracts, compilations, summaries or any other format reproducing or  
19 capturing any of the Protected Material. Notwithstanding this provision,  
20 Counsel are entitled to retain an archival copy of all pleadings, motion papers,  
21 trial, deposition, and hearing transcripts, legal memoranda, correspondence,  
22 deposition and trial exhibits, expert reports, attorney work product, and  
23 consultant and expert work product, even if such materials contain Protected  
24 Material. Any such archival copies that contain or constitute Protected  
25 Material remain subject to this Protective Order as set forth in Section 4  
26 (DURATION).

1 14. Any willful violation of this Order may be punished by civil or criminal  
2 contempt proceedings, financial or evidentiary sanctions, reference to  
3 disciplinary authorities, or other appropriate action at the discretion of the  
4 Court.

5  
6 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

7  
8 Dated: August 16, 2024

DWOSKIN WASDIN LLP

9  
10 By: /s/ Nicholas F. Wasdin  
11 Nicholas F. Wasdin

12 *Attorney For Plaintiff and the Proposed*  
13 *Class*

14 Dated: August 16, 2024

LEWIS BRISBOIS BISGAARD & SMITH  
15 LLP

16  
17 By: /s/ Andrew J. Chan  
18 Andrew J. Chan

19 *Attorney For Defendant FitOn Inc.*

20  
21  
22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23  
24  
25 DATED: August 19, 2024

*Patricia Donahue*

26  
27 Hon. Patricia Donahue  
United States Magistrate Court Judge

Attestation Regarding Signatures:

Pursuant to Local Rule 5-4.3.4(a)(2)(i), I, Andrew J. Chan, attest that all signatories listed, and on whose behalf this filing is submitted, concur in the filing's content and have authorized the filing.

Dated: August 16, 2024

/s/ Andrew J. Chan  
Andrew J. Chan



EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [full name], of \_\_\_\_\_  
[full address], declare under penalty of perjury that I have read in its  
entirety and understand the Stipulated Protective Order that was issued by  
the United States District Court for the Central District of California on [date]  
in the case of *Jennifer Endres v. FitOn Inc*, Case No. 2:24-cv-01589-FMO-PD  
(C.D. Cal.). I agree to comply with and to be bound by all the terms of this  
Stipulated Protective Order and I understand and acknowledge that failure to  
so comply could expose me to sanctions and punishment in the nature of  
contempt. I solemnly promise that I will not disclose in any manner any  
information or item that is subject to this Stipulated Protective Order to any  
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District  
Court for the Central District of California for the purpose of enforcing the  
terms of this Stipulated Protective Order, even if such enforcement  
proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_

**FEDERAL COURT PROOF OF SERVICE**

*Jennifer Endres v. FitOn Inc.*  
Case No. 2:24-CV-01589-FMO-PD

STATE OF CALIFORNIA, COUNTY OF CONTRA COSTA

At the time of service, I was over 18 years of age and not a party to the action. My business address is 2185 N. California Blvd, Suite 300, Walnut Creek, CA 94596. I am employed in the office of a member of the bar of this Court at whose direction the service was made.

On August 16, 2024, I served the following document(s):

**STIPULATED PROTECTIVE ORDER**

I served the documents on the following persons at the following addresses (including fax numbers and e-mail addresses, if applicable):

**SEE ATTACHED SERVICE LIST**

The documents were served by the following means:

☒ (BY COURT'S CM/ECF SYSTEM) Pursuant to Local Rule, I electronically filed the documents with the Clerk of the Court using the CM/ECF system, which sent notification of that filing to the persons listed above.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct.

Executed on August 16, 2024, at Walnut Creek, California.

/s/ Andrew J. Chan

Andrew Chan

**SERVICE LIST**

*Jennifer Endres v. FitOn Inc.*  
Case No. 2:24-CV-01589-FMO-PD

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